Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

COMMENTS OF FREE PRESS

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I. Introduction

The questions raised in the *Further Inquiry*[1] illustrate just how far this proceeding to reform the Universal Service High Cost Fund has come from the framework of the National Broadband Plan. What started as a push to toss aside the wasteful and outdated policy regime of the past 15 years in favor of a more modern and responsible universal service program has predictably turned into a forum for incumbents to protect and expand their own ability to feed from the subsidy trough. That the Commission put out the Joint Industry Framework[2] for comment and didn't immediately set it aside simply provides more fodder for those who feel the agency is too captured by politics and path dependence to actually act as an independent regulator and pursue policies that are truly in the public interest.

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[1] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up;* WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding, DA 11-1348, August 3, 2011 ("Further Inquiry").

[2] Comments by the State Members of the Federal-State Joint Board on Universal Service, WC Docket No. 10-90 et al. (filed May 2, 2011) (State Member Comments); Comments of NECA, NTCA, OPASTCO, and WTA, WC Docket No. 10-90 et al. (filed May 2, 2011) (RLEC Plan); Letter from Robert W. Quinn, Jr., AT&T, Steve Davis, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, and Michael D. Rhoda, Windstream, to Marlene H. Dortch, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (ABC Plan). *See also* Letter from Walter B. McCormick, Jr., United States Telecom Association, Robert W. Quinn, Jr., AT&T, Melissa Newman, CenturyLink, Michael T. Skrivan, FairPoint, Kathleen Q. Abernathy, Frontier, Kathleen Grillo, Verizon, Michael D. Rhoda, Windstream, Shirley Bloomfield, NTCA, John Rose, OPASTCO, and Kelly Worthington, WTA, to Chairman Julius Genachowski, Commissioner Michael J. Copps, Commissioner Robert M. McDowell, Commissioner Mignon Clyburn, FCC, WC Docket No. 10-90 et al. (filed July 29, 2011) (Joint Letter).

As we noted in our April comments, the Commission is right to focus on the need to modernize the USF, certainly if that focus is aimed at ensuring that all Americans have access to and thereafter adopt affordable, high-quality broadband communications services. But the obvious need for real reform may spur policy ideas that merely seek to capitalize on and take advantage of this desire for reform. As we previously noted, such is the case with the thrust of the Commission's proposals in the instant proceeding, and it is even more so with the Joint Industry Framework. The solutions proposed don't match the problems. In fact, they just perpetuate many of the old problems and create new ones.

While there has long been a perception of a large rural broadband deployment problem, recent data indicates that this problem is small in scope and that the pace of technology will solve some of these deployment (though not competition or adoption) problems. According to the NTIA, high-speed Internet access service offered by wire and/or wireless technologies, is available to 98.3 percent of the entire U.S. population and 93 percent of the U.S. rural population.[3] In only 5 of the 50 U.S. states is basic broadband available to less than 90 percent of the *rural* population in those states.[4] And we now know that by 2013, more than 97 percent of Americans will have access to 4G broadband services from at least two providers.[5]

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[3] See "Broadband Statistics Report, Broadband Availability in Urban vs. Rural Areas," and "Broadband Statistics Report, Access to Broadband Technology by Speed," National Broadband Map, NTIA and FCC, February 2011. Basic broadband means what the FCC defines as "basic broadband tier 1," or greater than 768 kilobits per second (kbps) downstream, and greater than 200 kbps upstream.

[4] *Id.* showing Alaska, Indiana, New Mexico, Virginia, and West Virginia with between 51.7 percent and 89 percent of their rural residents having access to "basic broadband" as defined by the Commission.

[5] Verizon will cover approximately 98 percent of Americans with its 4G LTE mobile (or fixed) service by 2013, and AT&T will offer its 4G HSPA+ service to 97.3 percent of Americans by 2012. *See* "It's a Verizon Wireless iPhone, but It's not LTE," Connected

This suggests that better coordination between federal, state and local policymakers and not more federal USF subsidies is the best approach to identifying and solving the rural deployment problem. Given the near universal availability of 4G mobile broadband by 2013, along with the improvements in satellite broadband technology and the Commission's own willingness to meet our universal service goals for the hardest to serve with satellite,[6] the need for a Connect America Fund (CAF) -- much less a large perpetual CAF as proposed in the Joint Industry Framework -- has not yet been demonstrated.

We urge the Commission to stop the rush to check the box on "reform," reject the Joint Industry Framework, and instead focus on implementing the few real reforms identified in the earlier NPRM,[7] including elimination of IAS, LSS and the identical support rule. If the Commission's primary goal is to get as many people using broadband

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Planet, Jan. 11, 2011. ("VZW's CDMA and EV-DO networks cover 98% of the population."). *See also* "Verizon Wireless Unveils Suite of 4G LTE Smartphones, Tablets, a MiFi, Hotspot and Notebooks," Verizon press release, Jan. 6, 2011. ("We will aggressively continue launching 4G LTE markets over the next 36 months. We'll cover two-thirds of the U.S. population in the next 18 months, and by the end of 2013, we'll offer our 4G LTE network from coast to coast – everywhere that we offer 3G today."). *See also* Joint Opposition of AT&T Inc., Deutch Telekom AG and T-Mobile USA, Inc. To Petitions to Deny and Reply to Comments, *In the Matter of Applications of AT&T Inc. and Deutsche Telekom AG, For Consent to Assign or Transfer Control of Licenses and Authorizations*, WT Docket. No. 11-65, June 10, 2011, at p. 81.

[6] The Commission should however reject calls from ViaSat and others to subsidize satellite carriers. These companies' business models explicitly involve serving rural consumers with no terrestrial options, and their cost structure is not impacted by the same density issues that terrestrial providers face.

[7] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up;* WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554 (2011) ("NPRM").

as possible, then the best thing it can do is put more money back into ratepayer's pockets and stop distorting markets with unnecessary subsidies distributed through a program built for a completely different era. And make no mistake, the latter is exactly what the Joint Industry Framework proposes.

Given that the broadband availability problem is small in scope and limited to primarily a few states, but that the broadband adoption problem is widespread across the entire country, it would be prudent for the FCC to focus on reducing the size of the high-cost fund and increasing broadband adoption through training and direct end-user subsidies. The absolute worst thing the Commission could do right now if it hopes to achieve the goals of Section 254 is to adopt self-interested proposals to increase Subscriber Line Charges (SLCs) put forward in the Joint Industry Framework -- an idea that is nothing more than a completely unwarranted, multi-billion dollar transfer of wealth from ordinary consumers to the largest incumbent carriers.

The Commission also faces substantial legal hurdles to creating a CAF, and the legal theories offered by the price cap ILECs in their portion of the Joint Industry Framework do not offer a clear way to survive judicial review. Section 254 focuses on *telecommunications* services, even as it contemplates the promotion of information services that utilize advanced telecommunications services for transport. The Commission may believe that it has constructed a defensible legal theory as to how it can subsidize broadband that it has chosen to classify as an information service; but in light of the April 2010 decision in the *Comcast* case, this is a very risky bet. Further, for the Commission to speak of broadband as the "one pipe to rule them all" in the administration of Section 254 while maintaining the information service designation illustrates both the illogical inconsistency in its classification position and the peril of not following through on an eminently sensible reclassification plan. This self-made legal straight jacket cannot merely be set aside; the Commission must own its consequences. That means faithfully carrying out its duties under Section 254 by enacting efficiency and accountability reforms; and recognizing that until Congress tackles the legal issues or the Commission reclassifies, the current planned wireless 4G deployments will have to suffice for rural Americans.

II. The Joint Industry Framework does not adequately reform the USF.

Any claim by the companies and trade associations that these parallel proposals represent "reform" of the USF system, as envisioned in the National Broadband Plan, is highly misleading. These proposals merely represent each group – large price cap incumbents and small rate-of-return incumbents – offering a plan that promotes that group's own self-interest, at the expense of consumers and small wireless carriers. At its heart, the Joint Industry Framework merely shifts support from competitive carriers to the large price cap incumbent carriers without addressing or properly assessing such beneficiaries' actual need for subsidies. And as a "bonus," this plan fully deregulates the largest of these carriers, gives them multi-billion dollar windfalls through increased SLCs and reduced access charges, and also gives them ratepayer support to upgrade their long-neglected rural networks -- deployments long ago promised to and paid for by their customers through higher, regulator-approved prices. In short, this plan is not reform, it's regulator-approved ratepayer robbery.

Currently, price cap incumbent carriers receive about $500 million in annual High Cost Fund support, or about 12 percent of the total. Under the Joint Industry Framework, this support would increase to $2.2 billion, or half of the total. This shift is accomplished largely through the redistribution of the current funding allocated to competitive eligible telecommunications carriers (CETCs), who in most cases are wireless providers. While there is a legitimate criticism of the existing method for supporting CETCs, the Joint Industry Framework appears to be more concerned with outcomes for carriers, not outcomes for consumers.

The self-interested nature of this plan on the price cap side is perfectly illustrated by their proposal to have a Right of First Refusal that allows them to insulate themselves from the competition that reverse auctions are supposed to create in the allocation of CAF funds. By choosing the figure of 35 percent coverage at the wire center level, the price cap carriers are ensuring that because they already serve the "donut hole" that they will be the only provider chosen to receive subsidies to serve the surrounding areas. If the Commission does pursue the path of reverse auctions, it must set a reasoned reserve price and open that competition to all providers. And the price cap carriers in their proposal do not contemplate a reasoned reserve price. They use a cost model that ignores wireless, and thus in combination with the 35 percent Right of First Refusal, ensures that this "reform" merely expands the inefficiencies of the current High Cost Fund.

The Joint Industry Framework also has no meaningful reform of the High Cost Fund for rate-of-return carriers. The proposal preserves the current broken system of treating rural rate-of-return carriers different from larger, "non-rural" price cap carriers. The plan does nothing to reform the inefficiencies and perverse incentives inherent in the historical cost support methodology. And it fails to adequately address inflated rates of return, resorting only to the defensive gesture of lowering the rate of return for CAF support to 10 percent, and hoping the Commission waives its own rules that require a rate of return prescription proceeding. Under this proposal, the High Cost Fund would continue to subsidize the entire cost of a triple-play capable rural telecommunications network while only accounting for the revenues earned on the regulated voice services. Further, the plan does little to contain rising costs. The rural carriers' plan explicitly contemplates that their draw on the High Cost Fund would grow overtime.

In short, both plans were constructed to maximize the benefits of supposed reform for each class of ILEC, without regard to the purpose of the USF nor the burdens on ratepayers. This framework is a step back from what Chairman Martin had negotiated with the large ILECs and some small carriers in the fall of 2008, and it certainly does not reflect the framework of the National Broadband Plan.

III. The Joint Industry Framework unfairly raises basic telephone rates on all consumers and unjustly enriches the largest ILECs.

At the center of the Joint Industry Framework is the basic assumption that the phasing down of access rates must be completely offset with other incoming revenue. But this assumption of entitlement that has framed ICC reform as a zero-sum-game has no basis in the law. While it is assumed that the current above-cost access rates are an implicit but necessary subsidy to achieve universal service, no one in this proceeding has offered evidence that the reduction of these rates require a dollar-for-dollar offset in order to ensure that rural rates and services are reasonably comparable to urban rates and services.[8]

The assumption that there should be any access recovery is only valid if the

[8] We question whether price-cap carriers should (as a result of this ICC reform effort) be allowed to "offset" their "lost" revenues, as these carriers already operate under incentive-based regulation.

regulated carriers are not already over-recovering costs. In other words, the claim that carriers (and their investors) must be "made whole" should only be accepted if the amount implicit subsidies contained within the current access rate structure is the exact amount needed to recover costs under a proper economic regulatory model. If a carrier's current common line revenues are above true economic cost, then ensuring "revenue neutrality" as a part of ICC reform will maintain inefficiency. Thus, if the Commission is serious about implementing meaningful reforms to the ICC system, then its first task is accurately quantifying the amount of and supposed need for implicit subsidies in the current access structure.

Further, before the Commission even entertains calls to increase the Federal Subscriber Line Charge (SLC), it must first determine the appropriate level for the SLC in order to ensure that there is no over-recovery in this fixed end-user charge. This will involve cost-studies and necessitate that the Commission finally address the jurisdictional separations issue, as the now decade-old freeze is certainly resulting in a highly distorted rate structure.

A. The Joint Industry Framework proposal to increase the Subscriber Line Charge mistakes the purpose of this fee and is an unwarranted transfer of wealth from non-rural subscribers to incumbent carriers.

Under the joint industry framework, carriers will be allowed to gradually increase the current \$6.50 per month Subscriber Line Charge (SLC) by \$3.75, nearly three times the unjustified and arbitrary increase contemplated in the 2008 ICC NPRM. While we fully understand the need for rate-regulated companies operating in rural high cost areas to recover costs, increasing the subscriber line charge for *all* basic telephone consumers is a poor and overly broad method for cost recovery, and one that will unjustly enrich the largest carriers.

For example, Verizon as a large ILEC and long-distance carrier stands to save billions each year as a result of having to pay lower access charges for terminating calls. However, as an ILEC, it will be able to raise the monthly SLC for *all* of its customers, including those customers who live in urban areas where cost-recovery is already more than adequate.

The purpose of the SLC is to recover the federal portion of the cost of the local-loop, ensuring that carriers are able to earn their common line revenue requirement. All subscribers of local access lines pay the SLC, regardless of whether or not they are a customer of a carrier who receives implicit subsidies via ICC. Therefore prudent regulatory behavior necessitates that the Commission undertake cost recovery studies before it contemplates any increase to the SLC. This would include a resolution of the jurisdictional separations issue. But neither the ICC proposals in the Joint Industry Framework nor their embodiment in the *Further Inquiry* propose any such cost studies; they simply ignore these considerations and assume that the SLC -- which all subscribers must pay -- can be used as an access recovery mechanism for high-cost carriers. The Joint Industry Framework just imposes a whopping $3.75 increase in the primary line SLC without any contemplation of whether or not such an increase would lead to an over-recovery of the federal portion of the cost of the local loop. This amounts to an estimated $3.6 billion dollar annual revenue increase[9] -- nearly a billion dollars more than the

[9] The Commission estimates there were about 80 million primary and non-primary residential lines. *See Trends in Telephone Service*, Industry Analysis and Technology Division Wireline Competition Bureau, September 2010, at Table 1-3.

amount needed to completely offset a shift to reciprocal compensation levels.[10] But again it should be noted that there is no reason to believe a full offset would be justified for cost-recovery (see below). And even more important, many of the lines that would see this massive increase in SLCs are lines in non-high cost areas operated by the very same long-distance companies that stand to receive the bulk of the multi-billion dollar windfall resulting from reduced access charges.

But these increases in the SLC ignore the reality that the current charges likely already lead to an over-recovery of costs for a substantial majority of lines. In the cost studies that followed the *CALLS Order*[11] (which imposed the current $6.50 SLC cap) the Commission concluded that approximately 82 percent of residential and single-line business price cap lines had forward-looking costs below $6.50.[12] Because of substantial

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[10] During the 2008 ICC proceeding, AT&T filed several estimates of the total amount of annual access shift resulting from ICC reform. A September 12th 2008 ex parte put the values of moving to a zero terminating rate at $4.3 billion, and estimated a $2.9 billion annual shift from a move to reciprocal compensation rates. An October 6th presentation put the value of a shift to a "unified" target at $2.6 billion, and a shift to a "recip comp proxy" (the 3 "Track" approach at $0.0025/$0.0100/$0.0150) was valued at $2.3 billion. An October 27th presentation valued the shift to a "recip comp proxy" (of $0.0025/$0.0050/$0.0090) at $1.977 billion. See Ex Parte communications of AT&T, Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; High-Cost Universal Service Support, WC Docket No. 05-337; Universal Service Contribution Mechanism, WC Docket No. 06-122; Intercarrier Compensation for ISP-Bound Traffic, WC Docket 99-68; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, September 12, 2008; October 20, 2008; October 27, 2008.

[11] Access Charge Reform, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) (CALLS Order), aff'd in part, rev'd in part, and remanded in part, Texas Office of Public Util. Counsel v. FCC, 265 F.3d 313 (5th Cir. 2001), cert. denied, Nat'l Ass'n of State Util. Consumer Advocates v. FCC, 70 U.S.L.W. 3444 (Apr. 15, 2002).

[12] See footnote 82, In the Matter of Cost Review Proceeding for Residential and Single-Line Business Subscriber Line Charge (SLC) Caps; Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers, CC Docket Nos. 96-262, 94-1, Order, FCC 02-161, rel. June 5, 2002.

improvements in technology, this 2002 result is likely an underestimate of the proportion of lines that are over-recovering today. Therefore, a \$3.75 primary line SLC increase would be far too high, as it would not only offset the full value of moving to a lower terminating access rate (e.g. a reciprocal rate), but would also fail to account for the *current* level of SLC over-recovery. For the tens of million of urban subscribers and those subscribers living in states that have already rebalanced access rates, such an increase would be nothing more than government endorsed price gouging of the most vulnerable consumers; an FCC-approved multi-billion dollar wealth transfer from poor and elderly consumers to the largest ILECs who are enjoying record revenues.

Therefore, the Commission must revisit these cost studies in a comprehensive manner prior to implementing any SLC increases. The price cap carriers argue that just because the cap on the SLC will increase, this does not necessarily mean that carriers will raise these charges, because, as the carriers claim, competition will be enough to hold prices down. However, this belief is not warranted, as the FCC's own historical data reveals that price cap regulated carriers continually increased SLC fees over the past decade, and many currently charge at or near the maximum.[13] Other evidence indicates that even competitive LECs not subject to the SLC cap charge fees at or above the federal maximum.[14] We also caution the Commission that over-recovery of loop costs for loops that offer unsubsidized services (such as DSL or IPTV) is a possible violation of Section

[13] *See Trends in Telephone Service*, *Supra* note 9, at Table 1-1. Those not charging near the maximum are likely charging less not because of competition, but because of constraints on total charges due to restraints on common line, marketing and transport (CMT) revenue requirements.

[14] *See e.g.* Comments of The National Association of Utility Consumer Advocates, *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, p.30.

254(k) of the Act.[15]

Further, the Commission must recognize the massive changes that have occurred in the telephony industry since the Commission last undertook access charge reform in 2001. Since then, vertical integration between RBOCs, IXCs and wireless carriers has nearly reconstituted the former Ma Bell monopoly. Verizon and AT&T dominate the local exchange, long-distance and mobility markets. Their respective long-distance and wireless businesses will benefit substantially from the lowering of access charges. While it is true that the LEC side of their businesses will have declines in access revenues, they stand to reap substantial net benefits from ICC reform. There is simply no reason for the Commission to allow these carriers to also raise their SLCs, particularly for their urban customers. To do so would simply exacerbate the massive regulatory agency-approved transfer of wealth already contemplated in the CAF portion of the Joint Industry Framework.

B. The access replacement fund is merely another unjustified subsidy.

The point of reforming the USF is to ensure subsidies are directed where they are needed in order to ensure all Americans have access to advanced telecommunications services of comparable quality and price. The purpose of the USF, as articulated in Section 254, *is not to ensure the profitability of telecom carriers in perpetuity*. Subsidies should be based on actual need. This is why the access replacement fund is misguided. It

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[15] 47 U.S.C. § 254(k) states that a "telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition. The Commission, with respect to interstate services, and the States, with respect to intrastate services, shall establish any necessary cost allocations rules, accounting safeguards, and guidelines to ensure that services included in the definition of universal service bear no more than a reasonable share of the joint and common costs of facilities used to provide those services."

merely exists to ensure already unnecessary subsides continue, albeit under a different name. No carrier, neither rate of return nor price cap, has demonstrated that any access replacement fund is necessary, and certainly not one of the size contemplated in the Joint Industry Framework. And though the price cap carriers' plan calls for the fund to be phased out after five years, we remind the Commission that the same promise was made about the Interstate Access Support mechanism, a $650 million annual fund designed to replace lost access revenues resulting from the *CALLS Order*. That fund was supposed to disappear in 2005, and the latest Commission proposal again calls for its elimination. Yet ratepayers have given more than *$4 billion* to price cap carriers for this existing "temporary" replacement fund since it was due to expire, with no explanation from the Commission on why, or if the mechanism is even needed anymore. Indeed, the NPRM in this instant proceeding rightly calls for the elimination of IAS, albeit in an unnecessarily slow fashion, ensuring ratepayers are squeezed for as long as possible.

This history of a broken process is why members of Congress and the public have called for USF reform. If the Commission is serious about its responsibilities under the Act, it should conduct thorough cost studies to ask and answer the basic question: where are subsidies needed to ensure that supported services will be available at reasonable qualities and rates. If the Commission actually studied this question, instead of letting industry write its own rules, it might find that the size of the USF (particularly the High Cost Fund) is already far in excess of what is needed.

Of course, the elephant in the room here is the unregulated revenue streams of rate-of-return and price cap Local Exchange Carriers serving high-cost areas. Many of these carriers have deployed broadband and television services, allowing them to earn substantial unregulated revenues. Yet these revenues are not considered in the discussions of "need" for the purposes of universal service. Indeed, there are many instances where a USF-supported rural LEC provides a triple-play of voice, video and data in direct competition with a non-USF supported cable company. This raises the question of the extent of USF support actually needed in order for a rural LEC to meet its Carrier of Last Resort (COLR) obligations. We are glad the Commission has raised this issue in the earlier NPRM and in this *Further Inquiry*, and urge the Commission to consider broadband network revenues earned by those carriers seeking access revenue replacement.

C. The Joint Industry Framework would completely remove all consumer protections and regulatory obligations of price cap carriers, and would result in no meaningful oversight of the billions of dollars in Connect America Fund monies awarded to these carriers.

Buried in the price cap carriers' proposal is the requirement that the Commission completely eliminate all Carrier of Last Resort obligations (COLRs) for *all* price cap carriers (whether or not they participate in the CAF). The plan would also completely remove all obligations placed on these Eligible Telecommunications Carriers (ETCs) by Congress in Section 214 of the Communications Act. In addition, the plan requires that the FCC "eliminate all remaining federal rate and other service regulations imposed on price cap incumbent LECs." This to put it mildly, is the height of arrogance and hubris by an industry that clearly believes that it, not the Commission or Congress, call the shots. Not only have these carriers crafted a plan that nearly quadruples their USF support, but the social cost for doing this is higher prices for all consumers *and* the elimination of any and all federal regulation of these monopoly utility services. Apparently it is not enough for these incumbents that the prices for even their subsidized broadband services will not in anyway be monitored to ensure no unjust enrichment; they also want to be able to raise rates on legacy monopoly services for tens of millions of captive customers who have no other viable options.

The Joint Industry Framework also predictably sets aside any of the public interest obligations contemplated by the Commission in the NPRM. In the incumbents' view, they have a right to receive ratepayer subsidies, but absolutely should not be burdened with any oversight on how those billions are used. As we discussed above, the Commission has failed to adequately demonstrate the need for a CAF in the face of wireless market progress, has failed to demonstrate how large such a fund should be and how long it should last, and has offered a precarious legal authority theory that has a high likelihood of crumbling and taking with it this entire reform plan. However, if the Commission is determined to proceed without such justification, we strongly urge it to pay special attention to the public service obligations of CAF recipients, as identified in the NPRM. First, Congress clearly indicated in the American Recovery and Reinvestment Act that public funds should only be used to support open and non-discriminatory broadband networks. Second, since the rates of the services offered over CAF-supported networks will not be regulated, any future ongoing support must be based on a consideration of the network's total earned revenues. It would be very inefficient for ongoing support to be doled out to carriers who earn massive unregulated profits off of their customers on networks also paid for by the USF. Third, as the Commission recognized in the NPRM, several states have hamstrung their own deployment efforts through incumbent-sponsored laws that restrict local municipalities from filling unmet broadband needs.[16] Ratepayers nationwide should not be asked to pay for the shortsightedness of these states, and certainly should not be asked to give scarce subsidies to the very same companies who lobbied to have these anti-municipal broadband laws enacted in the first place.

IV. Conclusion

There is a very real broadband problem in rural America today. Fortunately, the advances in mobile technology and market forces are helping to address some of that problem. By 2013, 98 percent of Americans will have access to unsubsidized 4G services, many in areas where dial-up or slower 2G mobile services are currently their only methods of Internet access. Thus, High Cost Fund reform does not appear necessary to help achieve President Obama's goal of 98 percent mobile broadband coverage.

But High Cost Fund reform is desperately needed to help increase broadband adoption. Returning more money to ratepayers is one of the best ways of pushing broadband adoption from the near 70 percent level to the level currently seen in voice telephony. Unfortunately, while the National Broadband Plan, and to a lesser extent the NPRM that followed outlined positive steps towards such reform, the ILECs Joint Industry Framework tosses all that progress aside, in favor of a *fait accompli* presented to a Commission eager to resolve this long standing issue with minimal political damage. The carriers are literally telling the Commission 'take it or leave it.'[17] Well, if the choice is between real reform of the USF, and this deeply self-interested proposal that will raise

[16] NPRM at para. 299.

[17] The CEO of NTCA, a signatory to the Joint Industry Proposal recently told Politico, "So the message we've got to the FCC is that, if you pull out a card, things really do tumble down and all bets could be off at that point." *See* Kim Hart, "POLITICO Pro Interview: Shirley Bloomfield," *POLITICO Pro*, August 23, 2011.

consumer costs and further confer regulatory largesse on inefficient and incredibly profitable carriers without bringing broadband to those who would otherwise go unserved, then by all means, we encourage the Commission to tell the ILECs to leave it.

Respectfully Submitted,

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